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IN THE

Supreme Court of the United States

No. [redacted] 4 Term, 19 .

SANITARY REFRIGERATOR CO.,
Petitioner,

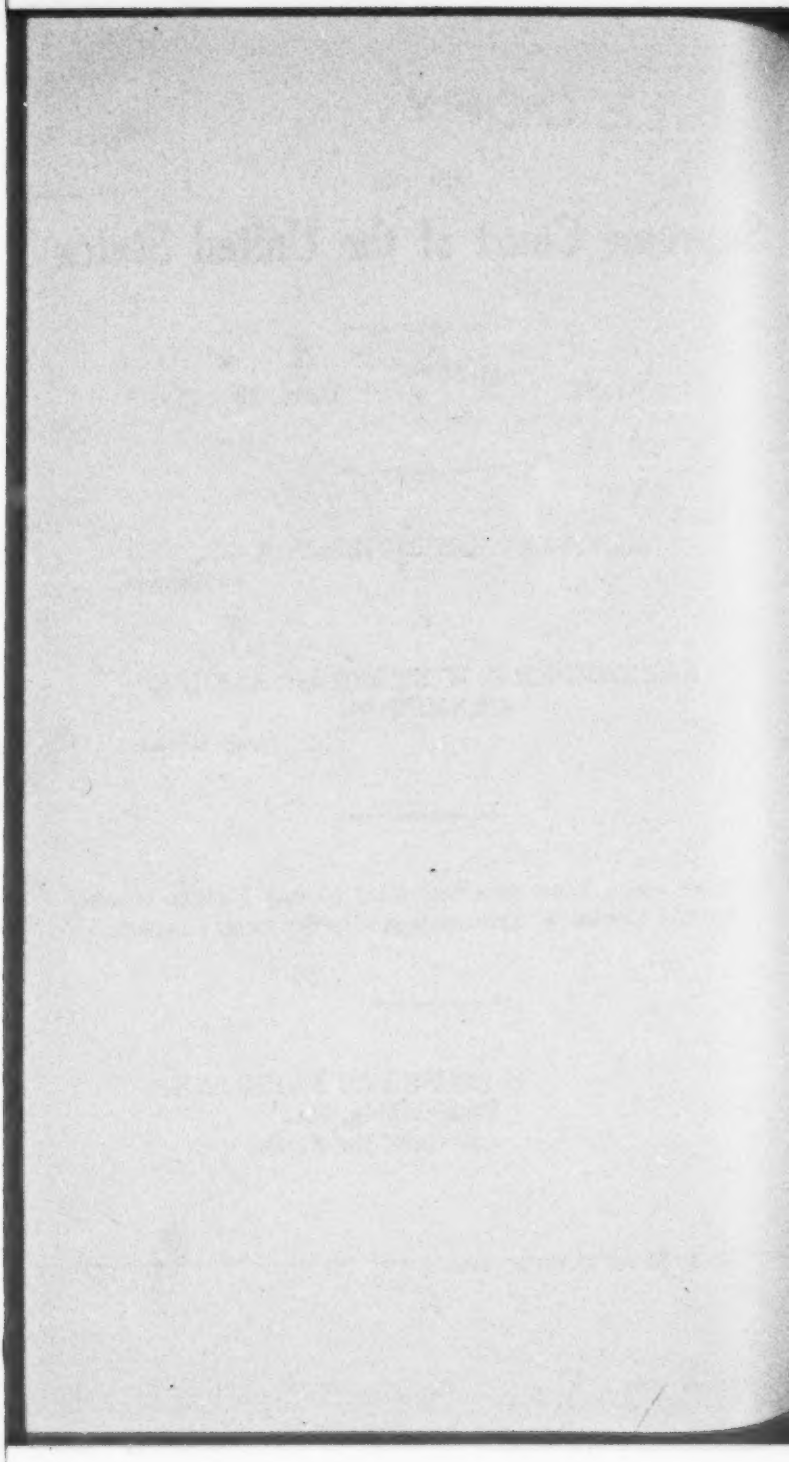
v.

ALEXANDER F. WINTERS and BASIL R. CRAMPTON,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

E. HAYWARD FAIRBANKS,
Philadelphia, Pa.,
Counsel for Petitioner.

I. F. Huntsinger Co., Appellate Printers, Camden, N. J.



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IN THE

SUPREME COURT OF THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI.

SANITARY REFRIGERATOR CO., *Petitioner,* v. ALEXANDER F. WINTERS and BASIL R. CRAMPTON, *Respondents.*	No.	Term, 19 .

Now comes Sanitary Refrigerator Co., the above-named petitioner, by E. Hayward Fairbanks, its attorney and counsel, and petitions this Honorable Court for a writ of certiorari directed to the Honorable, the Judges of the United States Circuit Court of Appeals, within and for the Seventh Judicial Circuit, commanding them forthwith to certify and return to this Court all proceedings had by them in the suit lately before them, wherein petitioner was appellant and said Alexander F. Winters and Basil R. Crampton were appellees.

The matter herein relates to Letters Patent of the United States No. 1,385,102, patented July 19, 1921, for an improvement in latch, said patent being granted to respondents herein.

Upon appeal the United States Circuit Court of Appeals for the Seventh Circuit held that said Winters and Crampton patent in suit was invalid as to claims 5 and 6, but valid and infringed as to claims 1, 2, 3, 4 and 7. Said

opinion of the Circuit Court of Appeals for the Seventh Circuit is at variance and in conflict with the opinion of Honorable Oliver B. Dickinson, District Judge for the Eastern District of Pennsylvania, who, in *Winters, et al. v. Dent Hardware Co.*, 20 Fed. 2d 671, involving the same Winters and Crampton patent and upon the same state of facts and the same issue of infringement held, that claims 1, 2, 3, 4 and 7 of said Winters and Crampton patent were not infringed and ordered a dismissal of the bill.

Respectfully,

E. HAYWARD FAIRBANKS,
Counsel for Petitioner.

HISTORY OF PROCEEDINGS IN THE SEVENTH CIRCUIT.

On or about November 23, 1925, respondents here, Winters and Crampton, filed their bill of complaint (R. p. 1) as plaintiffs, against Sanitary Refrigerator Co. in the District Court of the United States for the Eastern District of Wisconsin, charging your petitioner with infringement of Letters Patent No. 1,385,102, patented July 19, 1921 (R. p. 72), for an improvement in latches by reason of its use and sale of a latch constructed under patent No. 1,575,647 (R. p. 156), and praying an injunction and an accounting of profits in accordance with the usual practice in such cases.

On or about the 29th day of December, 1925, your petitioner, Sanitary Refrigerator Co., filed its answer therein. (R. p. 5.)

The issues being joined as above, the case was brought on to final hearing before his Honor, F. A. Geiger, District Judge, on February 18, 1927. On February 21, 1927, Judge Geiger announced a decision adverse to the Sanitary Re-

frigerator Co. (defendant there and petitioner here), holding all the claims of said Winters and Crampton patent valid and infringed by a latch constructed in accordance with patent No. 1,575,647 (R. p. 156), and referring the matter to a Master for an accounting under an interlocutory decree of the usual form, filed February 24th, 1927. (R. p. 61.)

After the decision by Judge Geiger, adverse to your petitioner, holding all the claims of the Winters and Crampton patent valid and infringed, Sanitary Refrigerator Co. (defendant there, petitioner here) appealed the case to the United States Circuit Court of Appeals for the Seventh Circuit on or about March 25, 1927 (R. p. 62), assigning errors, filing a supersedeas bond and perfecting said appeal.

After the case was docketed in the United States Circuit Court of Appeals for the Seventh Circuit, it came on for hearing before Justices Alschuler, Evans and Page, and was argued before them on January 18, 1928, and was decided February 9, 1928, in an opinion per Evans, J., reversing Judge Geiger as to claims 5 and 6 and holding said claims invalid, and affirming Judge Geiger as to the validity and infringement of claims 1, 2, 3, 4 and 7.

Copies of the decision of the District Court and of the Circuit Court of Appeals for the Seventh Circuit are hereto appended.

On the twenty-eighth day of February, 1928, your petitioner filed a petition for re-hearing in the United States Circuit Court of Appeals for the Seventh Circuit, which was denied March 6, 1928.

Your petitioner then moved in the Circuit Court of Appeals for the Seventh Circuit for an order staying the mandate pending the determination of this petition, which order was entered in said Court on or about March 8, 1928.

HISTORY OF PROCEEDINGS UNDER THE SAME WINTERS AND CRAMPTON PATENT No. 1,385,102 IN SUIT IN THE THIRD CIRCUIT IN THE EASTERN DISTRICT OF PENNSYLVANIA.

On the fifteenth day of March, 1927, Alexander F. Winters and Basil R. Crampton, respondents here, filed their bill of complaint in the District Court of the United States for the Eastern District of Pennsylvania against the Dent Hardware Company, a Pennsylvania corporation.

On this same day, moving papers for a preliminary injunction were filed, and defendant thereafter filed its affidavits *contra* motion.

Upon the cause coming on to be heard upon said motion, for final hearing. Thereupon, on April 27, 1927, defendant Judge Dickinson declined to hear the same and set the case filed its answer, placing the cause at issue. The case then went to final hearing upon full pleadings and proofs and was argued by counsel for the respective parties before Judge Dickinson, who, on August 11, 1927, filed an opinion holding claims 5 and 6 of the patent in suit (R. p. 72) invalid and the remaining claims 1, 2, 3, 4 and 7 not infringed. (*Winters v. Dent*, 20 Fed. 2d 671.)

On August 12, 1927, Judge Dickinson entered a decree dismissing the bill of complaint.

On October 10, 1927, plaintiffs filed an appeal from Judge Dickinson's decree dismissing the bill, to the Circuit Court of Appeals for the Third Circuit, which appeal has been argued and is now pending undetermined in the Circuit Court of Appeals for the Third Circuit.

DIFFERENCES OF OPINION.

As a part of this petition, your petitioner, Sanitary Refrigerator Co., submits herewith a certified copy of the record in the cause determined in the Seventh Circuit, showing all proceedings therein, both in the District Court in Wisconsin and the Circuit Court of Appeals for the Seventh Circuit. As shown by this record, the contentions at the hearings in said Courts, so far as concerns present questions, were in the Circuit Court of Appeals for the Seventh Circuit and in the District Court for the Eastern District of Pennsylvania, in reference to the validity and infringement of Winters and Crampton's claims 1, 2, 3, 4 and 7. (R. p. 72.) As to these questions, Circuit Judges Alschuler, Evans and Page, comprising the Circuit Court of Appeals for the Seventh Circuit, took one view, holding that the Winters and Crampton patent, although of narrow scope, was infringed as to claims 1, 2, 3, 4 and 7, while Judge Dickinson, in the District Court for the Eastern District of Pennsylvania, held that claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent were not infringed, 20 Fed. 2d 671, the issue of infringement being the same in both cases and being constructed under petitioner's Schrader patent. (R. p. 156.)

Your petitioner, therefore, shows that under the opinion of the Circuit Court of Appeals for the Seventh Circuit, your petitioner's device, constructed under said Schrader patent No. 1,575,647 (R. p. 156), has been held to be an infringement of the Winters and Crampton patent No. 1,385,102 in suit (R. p. 72) and, consequently, cannot be safely made, used or vended in the States of Illinois, Indiana and Wisconsin.

In the Eastern District of Pennsylvania and elsewhere, by reason of Judge Dickinson's decree of dismissal (20 Fed. 2d 671), petitioner's latch, constructed under the Schrader patent No. 1,575,647 (R. p. 156), can be made, used and sold without molestation, not only in the Eastern District of Pennsylvania, but in every other portion of the United States excepting the Seventh Circuit.

Your petitioner, therefore, shows that said decisions or adjudications in the Circuit Court of Appeals for the Seventh Circuit and in the United States District Court for the Eastern District of Pennsylvania in the Third Circuit are at variance and in conflict with each other, and the errors of the one or the other can only be authoritatively corrected in this Honorable Court. Also, that other matters of law decided as aforesaid by said Circuit Court of Appeals for the Seventh Circuit are at variance with sundry decisions of this Honorable Court as well as of other Circuit Courts of Appeal and at variance with the course and principles of equity.

Your petitioner further avers that the erroneous decision of the Circuit Court of Appeals for the Seventh Circuit seriously affects very large interests of your petitioner and inflicts serious and far-reaching damage upon it, inasmuch as it allows interference wrongfully with their business, which has been and should be protected from such wrongful interference by reason of the issuance of petitioner's said Schrader patent No. 1,575,647. (R. p. 156.)

Your petitioner further avers that the case is one of peculiar gravity and importance, inasmuch as your petitioner's manufacturer, the Dent Hardware Company of Fullerton, Penna., manufacturer of the device held to infringe in the Seventh Circuit and not to infringe in the Third Circuit, carries on one of the largest businesses of manufacturing refrigerator hardware in the world, and that the interposition of this Court is necessary to secure uniformity of decision, since special hardship is inflicted and is liable to be inflicted upon your petitioner unless the errors in law and fact of the Circuit Court of Appeals for the Seventh Circuit hereinbefore recited are corrected by your Honorable Court.

SPECIFIC ASSIGNMENTS OF ERRORS.

Your petitioner respectfully shows and insists that the decision in the Circuit Court of Appeals for the Seventh Circuit is erroneous in the following particulars:

1. The opinion is erroneous in holding that claims 1, 2, 3, 4 and 7 of the Winters and Crampton patent (R. p. 72) are infringed by the device constructed under the Schrader patent No. 1,575,647. (R. p. 156.)

2. The opinion is erroneous in finding infringement after holding the Winters and Crampton patent to be a narrow, restricted and limited patent and finding that such narrow, restricted and limited claims are infringed by defendants' device constructed under said Schrader patent No. 1,575,647. (R. p. 156.)

Wherefore, your petitioner prays that this Honorable Court take cognizance of the matters herein set forth or referred to and grant unto your petitioner a writ of certiorari, requiring said cause and the record thereof to be certified to this Court by the United States Circuit Court of Appeals for the Seventh Circuit, for review and determination herein, pursuant to the provision of the statute in such cases made and provided; and that your petitioner may have such other and further relief in the premises as the nature and circumstances of their case may require.

And your petitioner will ever pray, etc.

SANITARY REFRIGERATOR CO.
By:
WM. MAUTHE, Pres.

STATE OF WISCONSIN, }
COUNTY OF FONDULAC, } *ss.*

WILLIAM MAUTHE, President of the above-named petitioner, being duly sworn upon oath, says that he has read the foregoing petition subscribed to by him, and knows the contents thereof, and that the same is true in substance and matter of fact, as he verily believes.

(Sgd.) WILLIAM MAUTHE, Pres.

Subscribed and sworn to before me this 4th day of May, 1928.

BOYNTON K. MILLER,
Notary Public.

I hereby certify that the foregoing stated grounds in support of the petition for writ of certiorari in the above-entitled cause are, in my opinion, well founded in point of law.

E. HAYWARD FAIRBANKS,
Counsel for Petitioner.